

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-10-09

HEARING DATE: May 27, 2010

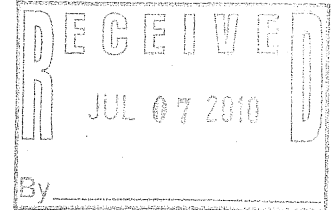
APPLICATION OF:

Lisa J. Fenno

PROPERTY:

3004 Lillian Lane

Collegeville, PA 19426



**OPINION, DECISION AND ORDER OF THE
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD**

The applicant, Lisa J. Fenno (hereinafter referred to as the “Applicant”), filed an application requesting a variance from the provision of the Lower Providence Township Zoning Ordinance establishing maximum impervious coverage in connection with proposed construction of a patio in the rear of the Applicant’s existing single family residence. The application was properly advertised, and a public hearing was held before the Lower Providence Township Zoning Hearing Board on May 27, 2010 at the Lower Providence Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor and the Court Reporter.

FINDINGS OF FACT

1. The Applicant is Lisa J. Fenno.
2. The Applicant is the legal owner of the subject property.
3. The subject property is located at 3004 Lillian Lane, Collegeville, PA 19426 (the “Property”).
4. The applicable zoning is R-3 Residential District.
5. The Applicant was not represented by legal counsel.
6. The lot size of the Property is 8000 square feet.

7. The Applicant proposes to build a patio to the rear of the single family residence.
8. The Applicant wishes to construct the patio to enhance the residents' ability for restful relaxation and provide greater flexibility for leisure activities and spending vacations at home instead of elsewhere.
9. The proposed patio will consist of pavers, and will total 399 square feet.
10. With the proposed project the total impervious coverage on the Property will exceed the maximum total impervious coverage limitation by approximately 363 square feet.
11. The Applicant testified that she spoke to her neighbors and they do not oppose the proposed project.
12. There were no comments from any neighbors or other residents at the hearing.
13. The proposed patio would be consistent with the existing residential neighborhood.
14. The proposed patio will not alter the essential character of the neighborhood in which the Property is located.
15. The unique physical characteristics of the lot are causing a hardship.
16. This is not a self-created hardship. Instead, it results from the unique physical characteristics of the Property.

DISCUSSION/CONCLUSIONS OF LAW

1. The Applicant is the legal owner of the Property and has standing to appear before the Board regarding the requested relief.
2. Denial of the requested relief will impose an unnecessary hardship upon the Applicant.

3. The hardship is not self imposed, and is due to the unique physical circumstances and characteristics of the Property.

4. The approval of the requested relief is necessary to enable the reasonable use of the Property.

5. The variance granted by the Board will not alter the essential character of the neighborhood or the zoning district in which it is located, will not substantially impair the appropriate use of adjacent properties and will not be detrimental to the public welfare.

6. The variance granted by the Board represents the minimum that will afford relief from the hardship.

The Applicant has requested a variance from the applicable maximum total impervious coverage limitation in connection with a proposed patio to be constructed in the rear of the existing single family residence located on the Property. This is a request for relief from requirements of the Zoning Ordinance of a dimensional nature, not for relief as to use requirements or limitations.

Differing standards apply to use and dimensional variances. Generally, a variance requires the applicant to show that unnecessary hardship will result if a variance is denied and that the proposed use will not be contrary to public interest. Hertzberg v. Zoning Bd. Of Pittsburgh, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998) (citing Allegheny West Civic Council, Inc. v. Zoning Bd. Of Adjustment of the City of Pittsburgh, 547 Pa. 163, 167, 689 A.2d 225, 227 (1997)).

The Supreme Court in Hertzberg held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of the Zoning Ordinance, determine whether the requested relief is for a use variance or a dimensional variance. Id. at 263-64, 721

A.2d at 50. The quantum of proof required to establish unnecessary hardship is lesser when a dimensional variance, as opposed to a use variance, is sought. Id. at 258-59, 721 A.2d at 47-48. In addition, to justify the grant of a dimensional variance courts may consider multiple factors, “including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood.” Id. at 263-64, 721 A.2d at 50.

It is only the stringency of the standard in proving an unnecessary hardship that varies, depending on whether a use or dimensional variance is sought. Great Valley School District v. Zoning Hearing Board of East Whiteland Township, 863 A.2d 74, 83 (Pa. Commw. 2004), appeal denied, 583 Pa. 675, 876 A.2d 398 (2005) (citing Zappala Group, Inc. v. Zoning Hearing Board of the Town of McCandless, 810 A.2d 708, 710-11 (Pa. Commw. 2002), appeal denied, 573 Pa. 718, 828 A.2d 351 (2003)); The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Commw. 2002); Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Commw. 2001).

Despite the trend to apply a relaxed standard to dimensional variances Pennsylvania case law is clear in its approach to the issuing of variances and demands that the reasons for granting a variance must be substantial, serious, and compelling. POA Company v. Findlay Township Zoning Hearing Board, 551 Pa. 689, 713 A.2d 70 (1998); Evans v. Zoning Hearing Board of the Borough of Spring City, 732 A.2d 686 (Pa. Commw. 1999); Soteneanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Commw. 1998). Moreover, variances from zoning codes should be granted sparingly and only under exceptional circumstances; a variance should not be granted simply because such a grant would permit the owner to obtain

greater profit from or use of the property. Commonwealth v. Zoning Hearing Board of Susquehanna, 677 A.2d 853 (Pa. Commw. 1996).

In order to grant a variance, the Board must make the findings set forth in § 910.2 of the Municipalities Planning Code, 53 P.S. § 10912.2, where relevant. See Hertzberg, 554 Pa. at 256-57, 721 A.2d at 46-47. The law established by the Pennsylvania courts further establishes these standards, stated in full herein. See Alpine Inc. v. Abington Township Zoning Hearing Board, 654 A.2d 186 (Pa. Commw. 1995); Appeal of Lester M. Prang, Inc., 169 Pa. Commw. 626, 647 A.2d 279 (1994). The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

- (1) That there are unique circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the applicant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

The requested variance is from the applicable maximum total impervious coverage limitation of Section 143-49.A of the Lower Providence Township Zoning Ordinance. Pursuant to Section 143-49.A, the applicable maximum total impervious coverage for each building lot is 25%. The Applicant requested this variance in order to construct a proposed patio, to be made of pavers, in the rear of the existing house.

The Board finds and concludes that based on the testimony presented by the Applicant, the Applicant has met the applicable standards for the requested relief regarding construction of a proposed patio with a total area of 399 square feet, and that such relief should be granted.

DECISION

The decision of the Lower Providence Township Zoning Hearing Board by a 5-0 vote is as follows:

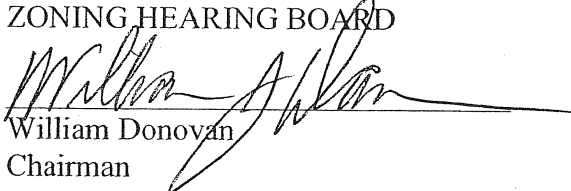
The application for variance from the maximum total impervious coverage limitation of Section 143-49.A of the Township Zoning Ordinance in connection with the Applicant's proposed construction of a patio with a total area of 399 square feet is granted.

Dated: July 6, 2010

ORDER

The foregoing Findings, Discussion and Decision are hereby approved and ordered.

LOWER PROVIDENCE TOWNSHIP
ZONING HEARING BOARD


William Donovan
Chairman

NOTE TO APPLICANT

There is a thirty (30) day period after the date of a decision for an aggrieved person to file an appeal in the Court of Common Pleas of Montgomery County to contest an approval or denial by the Zoning Hearing Board. If the Applicant has been granted Zoning Hearing Board approval, the Applicant may take action on said approval during the thirty (30) day appeal period; however, the Applicant will do so at his or her own risk. If the Applicant received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Lower Providence Township within one (1) year of the date of the approval or the decision granting approval.

